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JUL 19 2019

S.C. SUPREME COURT

Arthur K. Aiken

A. Bea Hightower

July 19, 2019

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse, Clerk
South Carolina Supreme Court
PO Box 11330
Columbia, SC 29211

Re: Russell Montgomery v. State of South Carolina
Civil Action No.: 2013-CP-38-01201

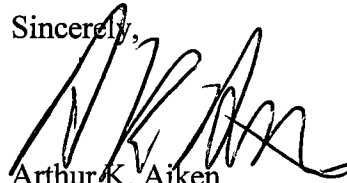
Dear Mr. Shearouse:

I am appointed counsel for the Applicant, Russell Montgomery, in the above captioned post-conviction relief case. I have enclosed an original and a copy of a Statement of Issue on Appeal for this case. Please file the original and return the file stamped copy to me.

By copy of this letter with the filing enclosed, I have served these filings on the Office of the Attorney General for South Carolina. I invite you and the Attorney General's representative to call if you have any questions.

Thank you for your help

Sincerely,



Arthur K. Aiken

art@aikenandhightower.com

Enclosures as stated

cc:

Office of the Attorney General for South Carolina (w/enclosures)
Russell Montgomery (w/enclosures and copy of July 9, 2019 letter Arthur K. Aiken)

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2013-CP-38-01201
Case No. 2013-CP-38-01488

Russell Montgomery.....Applicant/Appellant

v.

State of South Carolina.....Respondent/Respondent

STATEMENT OF ISSUE ON APPEAL

INTRODUCTION

This is a PCR appeal. In the underlying case, the Court dismissed the Application on the conclusion that the Application is successive. As required by Rule 243(c) SCACR, the Applicant/Appellant, Russell Montgomery submits the following to show an arguable basis for asserting that this conclusion by the lower court was improper.

FACTS

The Order of Dismissal in this case turns on whether Montgomery's application in this case is successive. That conclusion stands or falls on whether State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015) is retroactive. The Order of Dismissal concludes that Broadnax is not retroactive and that Montgomery's Application is, therefore, successive. As is more fully argued below, Broadnax is retroactive, and Montgomery's Application is not, therefore, successive.

ARGUMENT

Broadnax announced a new procedural rule. Before Broadnax, the prevailing law was that robbery convictions could be used to impeach testifying defendants without the need for a balancing of probative value and danger of unfair prejudice. State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). Broadnax overruled Al-Amin and held that robbery convictions could not be used for impeachment unless their use complied with the balancing test of probative value and danger of unfair prejudice. In Montgomery's original trial the court, relying on Al-Amin, admitted evidence of a robbery conviction without subjecting that evidence to the balancing test as later required by Broadnax.

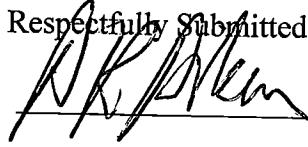
In South Carolina, new procedural rules like that in Broadnax apply retroactively if the new rules require "the observance of those procedures that ... are implicit in the concept of ordered liberty." Lucero v. State, 414 S.C. 238, 250, 777 S.E.2d 409, 413 (Ct. App. 2015). This set of new procedural rules is limited to "watershed rules of criminal procedure" that implicate the fundamental fairness and the accuracy of the proceeding. 414 S.C. at 251, 777 S.E.2d at 413.

The new rule announced in Broadnax is a watershed rule in criminal procedure. The limitations on admission of evidence of prior convictions is a matter of fundamental fairness, and it directly impacts the accuracy of criminal proceedings. The purpose of Broadnax is to safeguard against the jury hearing evidence that creates a danger of unfair prejudice. Unfair prejudice is the sworn enemy of fundamental fairness, and it creates grave dangers to the truth-seeking function of criminal trials.

CONCLUSION

The trial court based its conclusion that Montgomery's Application is successive on the holding that Broadnax is not retroactive. Broadnax is retroactive, and its retroactive application makes Montgomery's Application not successive.

Respectfully Submitted,



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Case No. 2013-CP-38-01488
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Russell Montgomery..... Applicant/Appellant

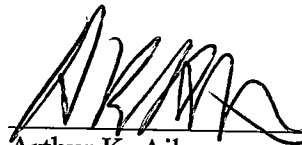
v.

State of South Carolina.....Respondent/Respondent

PROOF OF SERVICE

I certify that, on July 19, 2019, I served the Statement of Issue on Appeal in the above appeal by mailing a copy of that filing to the following:

Office of the Attorney General for South Carolina
Attorney General Alan Wilson
PO Box 11549
Columbia, SC 29201



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